

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 DANE R. GILLETTE
Chief Assistant Attorney General
3 GERALD A. ENGLER
Senior Assistant Attorney General
4 PEGGY S. RUFFRA
Supervising Deputy Attorney General
5 SHARON R. WOODEN
Deputy Attorney General
6 State Bar No. 108709
455 Golden Gate Avenue, Suite 11000
7 San Francisco, CA 94102-3664
Telephone: (415) 703-5966
8 Fax: (415) 703-1234
Email: sharon.wooden@doj.ca.gov
9 Attorneys for Respondent

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 **LUIS SANTANA,**

Petitioner,

15 **v.**

16 **JAMES A. YATES, Warden,**

Respondent.

C 07-5424 JF (PR)

19 **ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS**
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C 07-5424 JF (PR)

**ANSWER TO PETITION FOR
WRIT OF HABEAS CORPUS**

19 Respondent hereby provides this answer to the order to show cause why the petition for
20 writ of habeas corpus should not be granted:

21 **CUSTODY**

22 Petitioner is lawfully in the custody of James A. Yates, Warden of Pleasant Valley State
23 Prison in Coalinga, California, as a result of a judgment of conviction in Sonoma County Superior
24 Court Case No. SCR-33621. After entering a no contest plea to attempted murder and witness
25 intimidation, and admitting that he committed the offense for the benefit of a street gang and
26 personally inflicted great bodily injury, petitioner was sentenced to serve 26 years and eight months
27 in state prison.
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GENERAL AND SPECIFIC DENIALS

Respondent denies the state court's ruling was based on an unreasonable determination of fact or was contrary to or involved an unreasonable application of clearly established United States Supreme Court law. Respondent specifically denies that (1) the trial court improperly sentenced petitioner to a full strength consecutive sentence on the witness intimidation count, and (2) the imposition of the upper term sentence violated *Blakely v. Washington*, 542 U.S. 296 (2004) and petitioner's federal constitutional right to a jury trial.

PROCEDURAL DEFENSES

Petitioner's federal petition is timely. Petitioner failed to exhaust his claim in state court, but this Court may deny relief under 28 U.S.C. § 2254(b)(2).

LODGED DOCUMENTS

Respondent has lodged concurrently with this Answer the following exhibits: (1) state court Clerk's Transcript (1 Vol.); (2) state court Reporter's Transcript (Dec. 17, 2004); (4) state court Reporter's Transcript (Feb. 6, 2004); (4) opinion by the California Court of Appeal; (5) Petition for Review; (6) California Supreme Court letter explaining lack of jurisdiction due to untimeliness of petition; (7) respondent's brief.

Respondent hereby incorporates by reference the accompanying Memorandum of Points and Authorities in support of this Answer.

CONCLUSION

WHEREFORE, respondent respectfully submits that the Petition for Writ of Habeas Corpus should be denied.

Dated: June 6, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

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Chief Assistant Attorney General

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Senior Assistant Attorney General

PEGGY S. RUFFRA
Supervising Deputy Attorney General

/s/ Sharon R. Wooden
SHARON R. WOODEN
Deputy Attorney General
Attorneys for Respondent

SRW/srw/ljs
SF2008401284
c:\dat\Wooden\Santana.Ans.wpd